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Protection of civilians in armed conflict

Report of the Secretary-General

I. Introduction

1. The present report is submitted pursuant to the request contained in the statement by the President of the Security Council of 25 November 2015 (S/PRST/2015/23). It also responds to the Council's request, in its resolution 2286 (2016), for reporting on the protection of medical care in armed conflict.

2. In my previous report (S/2017/414), I underlined that the most effective way to protect civilians is to prevent the outbreak, escalation, continuation and recurrence of armed conflict. This remains my overarching priority. In this regard, dialogue and inclusive peace processes that address the parties' grievances and lead to sustainable solutions, coupled with a long-term holistic approach that addresses the root causes and prevents the escalation or recurrence of conflict, promotes human rights and the rule of law and strengthens governance and institutions, are essential.

3. In my report on peacebuilding and sustaining peace, issued in January 2018 (A/72/707-S/2018/43), I sought to forge a common vision, systems and capacities across the United Nations to support Member States in sustaining peace and building resilient and prosperous nations in line with their commitment to leave no one behind. I look forward to working with Member States to take forward its recommendations. At the same time, work continues within the United Nations to develop a prevention platform that will allow the system to maximize its existing tools and resources in support of a broad prevention agenda and greater accountability for violations.

4. Where we cannot prevent or resolve conflict, we must strengthen the protection of civilians. In doing so, we also contribute to the foundations for future peace. In my previous report, I identified three protection priorities: enhance respect for international humanitarian and human rights law and promote good practice by parties to conflict; protect the humanitarian and medical mission and accord priority to the protection of civilians in United Nations peace operations; and prevent forced displacement and pursue durable solutions for refugees and internally displaced persons. In the present report, I review progress made in relation to those priorities, with a focus on enhancing respect for international law and promoting good practice.

5. Section II below contains a review of the global state of the protection of civilians in armed conflict during the period from 1 January to 31 December 2017. It reveals a state of unrelenting horror and suffering affecting millions of women, children and men across all conflicts. Civilians are routinely killed or maimed, and

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civilian objects damaged or destroyed, in targeted or indiscriminate attacks that frequently involve the widespread use of explosive weapons. Civilians are forced from their homes to meet a perilous fate, while countless others are missing. Humanitarian and medical personnel are frequently targeted and killed or prevented from responding to those in need. Meanwhile, conflict-driven food insecurity and the potential for famine leave millions of lives in the balance. All this, and the decimation of entire towns and cities and the once-vibrant communities and societies that were their lifeblood, undermine the prospects for peace and stability and the restoration of hope and opportunity for the future.

6. The state of the protection of civilians is bleak, and the need for action to address it is urgent. As discussed in section III below, as conflict becomes increasingly urbanized, with the potential to affect tens of millions of people, ensuring the effective implementation of international humanitarian and human rights law is of paramount importance. The targeting of or failure to protect civilians cannot go unchallenged. The Security Council and Member States can ill afford to abdicate their responsibilities in the face of widespread violations and allow political differences to prevent or undermine concerted action to address and prevent violations. The stakes for civilians — and for international peace and security — are simply too high.

7. Against that backdrop, there are glimmers of hope. First, there is growing recognition among Member States of the instrumental role that respect for international humanitarian and human rights law plays in their efforts to end and prevent the spillover and recurrence of armed conflict, and to counter terrorism and prevent violent extremism. Second, there are practical steps that have been, and could again be, taken by parties to conflict and Member States to respect and ensure respect for the law and enhance the protection of civilians.

8. Drawing on these, in section IV below I recommend, first, that Member States develop national policy frameworks that establish clear institutional authorities and responsibilities for the protection of civilians; and second, that they support and facilitate expanded efforts to engage non-State armed groups to enter into action plans and develop codes of conduct, operational policy and other tools to ensure effective protection and accountability. Such actions would constitute an important advance towards effective implementation of the law and protection of civilians. At the same time, I recognize the continuing need for heightened advocacy and a concerted effort to ensure accountability for serious violations.

II. State of the protection of civilians

A. Widespread civilian deaths and injuries and impact on civilian objects

9. Civilian populations continue to bear the brunt of armed conflicts across the globe. Throughout 2017, tens of thousands of civilian women, children and men were killed or suffered appalling injuries as victims of deliberate or indiscriminate attacks by parties to conflicts affecting, inter alia, Afghanistan, the Central African Republic, the Democratic Republic of the Congo, Iraq, Libya, Mali, Nigeria, Somalia, South Sudan, the Syrian Arab Republic, Ukraine and Yemen.

10. In 2017, the United Nations recorded the death or injury of more than 26,000 civilians in attacks in just six of those situations: 10,000 in Afghanistan, more than 8,000 in Iraq, some 2,600 in Somalia and approximately the same number in Yemen. In the Central African Republic and the Democratic Republic of the Congo, attacks killed more than 1,100 and almost 2,000 civilians, respectively. The vast numbers of civilian deaths and injuries, combined with the testimony of victims and witnesses

and other reports, raise profound concerns as to the extent to which parties are taking constant care to spare civilians from the effects of hostilities, as required by international humanitarian law. Their obligation to do so, and the need for them to do so, cannot be emphasized enough.

11. The impact of conflict on civilians and civilian objects was particularly acute when fighting took place in densely populated areas and involved the use of explosive weapons with wide-area effects. In the Syrian Arab Republic, for example, attacks involving air- and ground-launched explosive weapons reportedly killed and injured significant numbers of civilians in Aleppo, Dayr al-Zawr, Homs, Idlib, Raqqah and Rif Dimashq and destroyed essential infrastructure, schools and hospitals. In Iraq, according to data verified by the United Nations, at least 4,200 civilians were killed and injured by shelling, air strikes and improvised explosive device attacks during operations to retake areas of Ninawa Governorate and Mosul city between October 2016 and July 2017. Other sources estimate that the number of civilian casualties was considerably higher. The fighting also led to the extensive destruction of homes and essential infrastructure.

12. The use of improvised explosive devices by non-State armed groups in Afghanistan, Libya, Mali, Nigeria, Somalia and the Syrian Arab Republic has also caused significant numbers of civilian casualties. In Afghanistan, for example, 624 civilians were killed and 1,232 injured by improvised explosive devices in 2017. The reported use of cluster munitions in 2017 in the Syrian Arab Republic and Yemen was of grave concern. I am also appalled by further reports of the use of chemical weapons in the Syrian Arab Republic, which seriously challenge the global and long-standing prohibition of such weapons, and the killing and injuring of even more innocent civilians. Such reports must be properly investigated. Where use is determined, Member States must find an appropriate way to identify those responsible and hold them to account.

13. As already reported (see S/2018/250), in 2017, sexual violence continued to be employed as a tactic of war, terrorism, torture and repression, including the targeting of victims on the basis of their actual or perceived ethnic, religious, political or clan affiliation. In many cases, such violence resulted in forcible displacement and dispersal of the targeted community, with corrosive effects on social cohesion. That alarming trend is common to a range of otherwise diverse conflicts, including in the Central African Republic, the Democratic Republic of the Congo, Iraq, Mali, Myanmar, Nigeria, Somalia and South Sudan. In those cases, to varying degrees, the strategic nature of sexual violence was reflected in the selective targeting of victims from specific ethnic, religious or political groups, mirroring the fault lines of the wider conflict or crisis and, in some cases, in the explicit nationalist or extremist ideologies espoused by the perpetrators. In such cases, conflict-related sexual violence has served as an expression of ethnic hatred or has been employed as part of "ethnic cleansing", often accompanied by insults based on the victim's identity and presumed allegiance.

14. Children continued to be disproportionately affected by armed conflict in 2017, and a further increase of cases of grave violations against children were verified. Armed violence often stripped away layers of protection afforded by families and society and led to a reduction of traditional safe spaces. Boys and girls were recruited and used in support roles or as combatants, including across borders, and surges in recruitment often coincided with increased levels of killing and maiming. Attacks on schools and hospitals as well as denials of humanitarian access impeded children's ability to obtain education, health care and vital humanitarian aid. Children were also subject to abduction, a tool often used to forcibly recruit children as well as for the purpose of rape and other forms of sexual violence against children. Enabling children affected by war to regain their childhood through the provision of community-based

psychosocial, educational and vocational reintegration programmes has been an important factor in overcoming stigmatization, avoiding re-recruitment and breaking the cycles of violence. However, too many children were unable to benefit from such support owing to a lack of funding. Ensuring predictable and flexible funding for reintegration processes through strengthened collaboration between child protection actors and funding partners is therefore essential.

15. Concern mounted over attacks carried out on places of worship in a number of conflicts in 2017, including in Afghanistan, the Democratic Republic of the Congo, Libya and Yemen. In Afghanistan, the United Nations documented 38 such attacks, resulting in 202 civilian deaths and 297 injuries — three times the number of the attacks carried out in 2016. Some attacks, including on two mosques in Kabul in August and October, appeared to deliberately target women. Conflict also continued to take its toll on journalists in 2017, with killings, injuries and threats reported in, inter alia, Afghanistan, the Democratic Republic of the Congo, Iraq, Libya, Somalia, the Syrian Arab Republic and Yemen. Such incidents have a serious impact on independent reporting, which is essential for exposing human suffering, restraining belligerents and building pressure for political solutions and accountability.

B. Forced displacement

16. Forced displacement was a defining feature of conflict in 2017, swelling the ranks of the approximately 65 million people displaced by conflict and violence at the end of 2016, the vast majority of them within their own countries. By November 2017, there were a total of 6.1 million internally displaced persons in the Syrian Arab Republic, including 1.8 million newly displaced that year alone. Three million people in Yemen have been forced from their homes and, like those displaced in the Syrian Arab Republic and elsewhere, face significant protection and assistance needs. In Ukraine, an estimated 1.6 million people are internally displaced, with many unable to access essential services.

17. The resurgence of violence in the Central African Republic in 2017 caused further internal displacement affecting almost 700,000 people, while more than 500,000 out of a population of 4.7 million have fled abroad. In the Democratic Republic of the Congo, more than 2 million people were internally displaced by violence in 2017, doubling the overall number of the internally displaced to 4.5 million. As in other conflict-affected countries, displacement in the Democratic Republic of the Congo is protracted, straining the capacities of the internally displaced and the communities that host them and leaving the displaced at risk of prolonged harm. In the Sudan, while displacement declined in Darfur and other areas in 2017, internally displaced persons faced continued violence, including killing and rape. In Somalia, forced evictions increased in 2017, affecting some 200,000 internally displaced, out of a displaced population of 2.1 million.

18. Some 1.9 million South Sudanese were displaced internally, some of them multiple times, as at the end of 2017. The militarization of camps and settlements for the internally displaced in South Sudan, as well as in the Central African Republic, the Democratic Republic of the Congo, Iraq and Nigeria, underlined the need to maintain the civilian and humanitarian character of camps and settlements. An additional 2.4 million South Sudanese have sought refuge across borders, with Uganda hosting more than 1 million of them, in addition to refugees from Burundi and the Democratic Republic of the Congo.

19. Uganda, Turkey, Pakistan, Lebanon and other major refugee-hosting countries continue to demonstrate considerable support for refugees. The future global compact on refugees must strengthen the international response to large movements of

refugees, including by easing the burden on host countries, meeting the needs of refugees and host communities and securing durable solutions. Similarly, the twentieth anniversary in 2018 of the Guiding Principles on Internal Displacement must mark the consolidation of efforts by Member States, the United Nations and other relevant actors to strengthen the response to internal displacement. This includes better understanding of urban displacement and strengthening the response to protracted internal displacement.

C. Constraints on humanitarian access

20. In 2017, widespread and persistent constraints on humanitarian access jeopardized humanitarian operations and the ability of affected populations to meet their basic needs in several conflicts. Besides active hostilities and logistical challenges, the most severe constraints were bureaucratic impediments and attacks against humanitarian personnel.

21. Bureaucratic impediments were reported in several conflict-affected areas, including Chad, Iraq, Mali, Myanmar, Nigeria, South Sudan, the Sudan, the Syrian Arab Republic, Ukraine, Yemen and the Occupied Palestinian Territory. In the Occupied Palestinian Territory, humanitarian access to the Gaza Strip continued to be restricted on security grounds, contributing to the deterioration in the humanitarian situation and compromising access to essential services and health care. The rate of the timely approval of permit applications for Palestinians to leave Gaza by way of Israel, including for humanitarian reasons, dropped to 54 per cent, the lowest in a decade. In non-Government-controlled areas of the Donetsk and Luhansk regions of eastern Ukraine, the imposition by the de facto authorities of additional registration requirements for humanitarian programming and activities compounded an already cumbersome process.

22. Counter-terrorism measures, including lengthy administrative processes and legislation criminalizing certain activities necessary for the conduct of humanitarian operations, continued to have an impact on humanitarian action. Member States should meet their security objectives while safeguarding principled humanitarian action by ensuring that counter-terrorism measures are designed and implemented in accordance with international law. One important example of this is the European Union directive on combating terrorism of March 2017, which exempts from its scope humanitarian activities provided by impartial humanitarian organizations recognized by international law.[1]

23. Particular concerns exist over the use of starvation of the civilian population as a method of warfare, which is prohibited by international humanitarian law. Siege and siege-like situations are having a devastating impact on civilian populations. At the end of 2017 in the Syrian Arab Republic, for example, some 420,000 people were living in nine besieged areas while an additional 2.9 million were in hard-to-reach areas. Only 820,000 of those people received some assistance during the year.

24. In Yemen, the provision of assistance to those in need, nearly 7 million of whom were at risk of famine, was extremely challenging in 2017. While restrictions imposed by the coalition to restore legitimacy in Yemen, led by Saudi Arabia, were gradually lifted as from the end of November, some remained until the end of the year, preventing the movement of humanitarian personnel and the entry of commercial vessels carrying humanitarian assets into Hudaydah port.

25. Such methods compound food insecurity and hunger. Global hunger is on the rise after declining for more than two decades, with conflict cited as the main reason

[1] See directive (EU) 2017/541, para. 38.

for that reversal. Ten out of the 13 major food crises in 2016 were conflict-driven.[2] Compliance with international humanitarian and human rights law is essential in protecting civilians affected by conflicts against hunger.

D. Attacks against humanitarian workers and assets

26. Violence against, or the detention or abduction of, humanitarian workers, often involving national staff, continued to impede humanitarian operations in Afghanistan, the Central African Republic, Chad, the Democratic Republic of the Congo, Libya, Mali, Somalia, South Sudan, the Syrian Arab Republic and Yemen. In the Democratic Republic of the Congo, 389 security incidents were reported in just the second half of 2017, limiting access to humanitarian assistance for more than 1 million people. In South Sudan, 30 humanitarian workers were killed in 2017. In Somalia, 116 humanitarian workers were subjected to violence, with 16 killed and 31 abducted. In Mali, security incidents involving humanitarian workers almost doubled, from 68 in 2016 to 135 in 2017. There were also reports of the looting of humanitarian assets in those and other situations.

E. Attacks against and other interference with the medical mission

27. The reporting period saw further attacks against medical workers, patients and medical facilities, equipment and transport, and interference with the provision of impartial medical care. Incidents included direct attacks against medical workers and facilities; the removal of medical supplies from humanitarian convoys and warehouses; the use of medical facilities for military purposes; and the threat of legal or other sanctions for providing medical care to sick or wounded combatants from opposition forces. In 2017, the World Health Organization (WHO) recorded 322 attacks across conflict-affected countries including Afghanistan, the Central African Republic, the Democratic Republic of the Congo, Iraq, Libya, Mali, Nigeria, Somalia, South Sudan, the Sudan and the Syrian Arab Republic. Those attacks resulted in 242 deaths and 229 injuries among medical personnel and patients.

28. In the Central African Republic, 18 medical facilities were attacked in 2017, with seven medical personnel killed. There were also reports of non-State armed groups occupying medical facilities and preventing ambulances from transporting the sick and wounded. A similar pattern was evident in Libya, with 16 attacks on medical facilities and interference with ambulances, as well as assaults on, and the abduction of, medical personnel. In the Syrian Arab Republic, 112 attacks against medical facilities and workers were verified by the United Nations, while 645,000 medical items were removed from inter-agency cross-line convoys during the year. In Afghanistan, in addition to attacks being carried out against medical workers, 147 medical facilities were forcibly closed following threats from armed groups. The duration of closures varied from several hours to several months, affecting access to health care for tens of thousands of people. WHO estimates that in 2017, more than 730,000 Afghans, with women constituting 65 per cent of that number, were unable to access needed health-care services.

29. I welcome the efforts of Member States to implement resolution 2286 (2016) concerning the protection of the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, and their means of transport and equipment, as well as hospitals and other medical facilities, and my predecessor's recommendations. Co-chaired by Canada and Switzerland, the informal

[2] See Food and Agriculture Organization of the United Nations and World Food Programme, *Monitoring Food Security in Countries with Conflict Situations*, issue No. 3 (January 2018).

group of friends of resolution 2286 (2016) seeks to mobilize leadership for protecting the medical mission and promotes the issue in the General Assembly and the Human Rights Council. In October 2017, 12 Member States, including France, signed the French-led declaration on the protection of humanitarian and medical personnel in conflict. Actors in the United Nations system continue to support these efforts. WHO, for example, is rolling out a surveillance system for the collection of data regarding attacks on health care.

30. At the national level, efforts to promote cooperation and the exchange of information among stakeholders and to adopt and implement precautionary measures continued. National Red Cross and Red Crescent Societies and the International Committee of the Red Cross (ICRC) have worked with Governments to adopt laws that protect health care and ensure respect for the emblems of the International Red Cross and Red Crescent Movement. Such developments are welcome, although more could be done to ensure compliance with the law and accountability for its violation; to strengthen the collection of data; to facilitate exchanges on good practices in implementing resolution 2286 (2016), including in capitals and regional forums; and to ensure that the protection of medical care is included in the capacity-building of partner forces and in military doctrine and training.

F. The missing

31. Alarming numbers of persons remain missing in armed conflicts. Parties are not taking action to prevent persons from going missing, to increase the chances of accounting for those who do, or to uphold the right of families to know the fate and whereabouts of missing relatives. ICRC has launched a four-year project, from 2017, to develop professional standards and practices in relation to the missing and their families. Parties to conflict and Member States must ensure the implementation of the law as it applies to missing persons.

G. Accountability for violations

32. Fundamental to ensuring respect for international law is ensuring accountability for violations. The reporting period saw positive developments in national-level investigations and prosecutions, including through the exercise of universal jurisdiction. Specialized war crimes units in a number of European and other States investigated or prosecuted 126 individuals suspected of having committed international crimes, resulting in 13 convictions.[3] Hybrid courts also have a potentially important role to play in holding the perpetrators of serious violations to account. I welcome the progress made in 2017 towards the operationalization of the Special Criminal Court in the Central African Republic. Such developments notwithstanding, the need remains for prompt and concerted action to enhance accountability at the national level.

33. Where national action is lacking, international investigative and judicial mechanisms can ensure accountability. The conviction in 2017 by the International Tribunal for the Former Yugoslavia of Ratko Mladic for genocide, war crimes and crimes against humanity, more than 20 years after their perpetration, is a reminder of the long reach of international justice and of the Tribunal's critical role in its development. From its establishment in 1993 to the end of its operations in 2017, the Tribunal sentenced 90 individuals for genocide, war crimes and crimes against

[3] See Trial International, *Make Way for Justice #4: Momentum towards Accountability: Universal Jurisdiction Annual Review 2018* (2018).

humanity and inspired national prosecutions. The cause of criminal justice is a long-term undertaking and deserves our full support.

II. United Nations peace operations and protection of civilians

34. United Nations peace operations are important tools for protecting civilians in some of the situations referred to above. Operating in increasingly challenging circumstances, the protection of civilians has become one of the most important tasks for many peacekeeping operations. Activities include supporting the implementation of local peace agreements in the Central African Republic; providing physical protection to thousands of civilians in South Sudan; and rapid deployments to places in the Democratic Republic of the Congo where civilians could potentially come under the threat of physical violence. Regular reporting on civilian casualties by United Nations peace operations in Afghanistan, Iraq, Libya and Somalia supports targeted advocacy aimed at changing the behaviour of parties to conflict.

35. United Nations peacekeeping missions face new environments and contexts, including complex and asymmetrical threats and political violence, that challenge traditional approaches to protection. Missions continue to innovate, and we are supporting them by revising our peacekeeping policy on the protection of civilians and developing a policy on the prevention of and responses to conflict-related sexual violence. Efforts to improve performance include new directives and training for military and police forces on child protection and the protection of civilians and an operational manual for child protection officers in peace operations.

36. The importance of the protection mandate is reflected in a renewed focus on the accountability of senior leadership for its implementation and my commitment to investigate reports of underperformance by peacekeepers. It is also reflected in the independent reviews of all peacekeeping missions that are intended to ensure that they are fit for purpose. In addition, protecting civilians is closely related to the recent report entitled "Improving security of United Nations peacekeepers: we need to change the way we are doing business", which contains important recommendations to improve performance.

37. Strengthening the work of peacekeepers also requires the commitment of Member States to find consensus around the language and implications of peacekeeping tasks, including clarity regarding the expectations of peacekeepers and recognition of those situations that may be outside their capacity to respond. It also requires the commitment of financial contributors to ensure that missions are properly resourced, and of troop contributors to provide contingents that are up to this challenging task. Finally, protection in peacekeeping requires the commitment of host States and parties to conflict to fulfil their legal responsibility to protect civilians and allow peacekeepers to implement their mandate.

III. Revisiting protection priority I — enhance respect for international law and promote good practice by parties to conflict

38. As noted in my previous report, the appalling suffering inflicted upon civilians would be significantly reduced if belligerents respected applicable international humanitarian and human rights law, and if third States took the measures necessary to ensure respect for the law, as required by international humanitarian law. As conflicts are increasingly being fought in densely populated towns and cities, with the potential to negatively affect the lives of tens of millions of people in the future,

enhancing respect for the law and promoting good practices have perhaps never been more urgent than they are today.

A. Protecting civilians and civilian objects in urban warfare

39. More than 50 million people are currently affected by conflict in urban areas. That number will likely increase as urbanization continues and parties to conflict, in particular non-State armed groups, take advantage of the urban environment to alter the balance of power between themselves and conventional armed forces and complicate State efforts to protect civilians.

40. Respecting the law and protecting civilians in such situations is, and will continue to be, an essential and significant challenge for parties to conflict. This is due to the high density of civilian populations; the possibility of the sudden and unexpected presence of civilians among combatants; the commingling of combatants and military objectives with civilians and civilian objects, which may at times be deliberate; the vulnerability to damage and the interdependence of basic service infrastructure, such as water and electricity systems, that is essential for the well-being of civilians; and the likelihood of large outflows of civilians in need of immediate protection and assistance, including access to specialized trauma and other medical care.

Use of explosive weapons in populated areas

41. Of particular concern is the widespread use in urban areas of air-dropped bombs, artillery, mortars, rockets, improvised explosive devices and other explosive weapons, and the consequences for civilians. It is reported that in 2017, out of a total of 42,972 people killed or injured by explosive weapons, 31,904, or three out of every four victims, were civilians — a 38 per cent increase compared with 2016. When explosive weapons were used in populated areas, 92 per cent of the casualties were civilians. The Syrian Arab Republic, Iraq and Afghanistan saw the highest numbers of civilian casualties, with air-launched explosive weapons the leading cause, followed by improvised explosive devices and ground-launched weapons.[4]

42. Those statistics are alarming and justify urgent international action to address this problem. It is all the more pressing when one considers the well-documented and devastating reverberating or long-term effects of the use of explosive weapons in populated areas — effects that are largely foreseeable and must be taken into account in the planning and conduct of military operations. As seen in recent years in, inter alia, Afghanistan, Iraq, the Syrian Arab Republic, Ukraine, Yemen and the Occupied Palestinian Territory, effects of hostilities on civilian objects include the extensive destruction of homes, hospitals, schools, workplaces and essential infrastructure, with reverberating effects on water and electricity systems that increase the risk and spread of disease and food insecurity. Civilians are displaced and may lack access to lifesaving and other assistance and remain exposed to further violence. Residential and other urban areas are contaminated with lethal explosive remnants of war and improvised explosive devices, the identification and removal of which is painstaking and costly and can prevent access to essential services and the return of displaced persons. In the long term, progress towards the achievement of the Sustainable Development Goals is lost, if not reversed, while reconstruction requirements and the associated costs are overwhelming. I would again call on parties to conflict to avoid the use of explosive weapons with wide-area effects in populated areas.

[4] See Action on Armed Violence, *Explosive Violence Monitor 2017* (April 2018).

43. I welcome the increasing interest in this problem among high contracting parties to the Convention on Certain Conventional Weapons and on the part of the 19 States that adopted the communiqué of the African regional meeting on the protection of civilians from the use of explosive weapons in populated areas, held in Maputo in November 2017. In the communiqué, it was acknowledged that there is a need for national, regional and global action, including on avoiding the use of explosive weapons with wide-area effects in populated areas and the development of a political declaration to address the problem. Multilateral efforts in that regard, including the Austrian-led process to achieve a political declaration on the subject and the German initiative to discuss the problem within the framework of the Convention on Certain Conventional Weapons, warrant the constructive engagement of all Member States. Progress on those efforts would provide important recognition of the problem and commit Member States to specific steps to address it.

44. In 2017, the Office for the Coordination of Humanitarian Affairs published a compilation of military policies and practices on explosive weapons in populated areas. Drawing on the tactical directives developed by the former International Security Assistance Force (ISAF) in Afghanistan and the indirect-fire policy of the African Union Mission in Somalia (AMISOM), the compilation demonstrates how military forces have strengthened the protection of civilians by limiting the use of explosive weapons in certain circumstances, and without compromising mission effectiveness. Research shows that the tactical directives and other reforms of ISAF did not undermine force protection or give non-State armed groups a significant military advantage,[5] and that mission effectiveness increased.[6]

45. Practices have also been adopted by some non-State armed groups to reduce the impact of explosive weapons on civilians. These include advance warning, the consideration of tactical alternatives to explosive weapons, and the use of observers to ensure the accurate targeting of military objectives.[7]

B. The fundamental legal obligation and common interest to respect and protect civilians

46. Respect for, and the protection of, civilians and civilian objects in the conduct of hostilities is, first and foremost, a legal obligation of all parties to conflict for which they must be held to account. Some military forces have recognized that ensuring respect for the law and protecting civilians are important components of mission effectiveness. This was a key lesson that was learned by ISAF and AMISOM and that led to the above-mentioned reforms[8] and is reflected in current military policy.[9] It is also apparent in the practices of some non-State armed groups.[10]

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[5] See C. Kolenda, R. Reid, M. Retzius and C. Rogers, *The Strategic Costs of Civilian Harm: Applying Lessons from Afghanistan to Current and Future Conflicts* (Open Society Foundations, June 2016).

[6] See remarks of Larry Lewis to the All Party Parliamentary Group on Drones, 12 July 2017, available at http://appgdrones.org.uk/wp-content/uploads/2014/08/Prepared-comments-Larry-Lewis.pdf.

[7] See Geneva Call, *In Their Words* (2017).

[8] See Kolenda et al., *The Strategic Costs of Civilian Harm*, and Lewis.

[9] See, for example, Department of the Army, *Protection of Civilians* (ATP 3-07.6) (2015); United States Joint Chiefs of Staff, *Joint Publication 3-0, Joint Operations* (2017); Department of the Army/United States Marine Corps, *Urban Operations* (ATP 3-06 MCTP 12-10B) (2017); and European Union Military Committee, *Avoiding and Minimizing Collateral Damage in European Union-Led Military Operations* (EEAS(2015) 772 REV 8) (2016), paras. 8–9.

[10] See Geneva Call, *In Their Words*.

47. Ensuring respect for the law and the effective protection of civilians is directly relevant to broader efforts by Member States to respond to terrorism and prevent violent extremism. In that regard, the Plan of Action to Prevent Violent Extremism calls upon Member States to ensure that the use of military action to counter the expansion of violent extremist groups complies fully with international humanitarian and human rights law. In General Assembly resolution 70/291, Member States also stressed that when counter-terrorism efforts violate international law, including international humanitarian and human rights law, they not only betray the values they seek to uphold, but may also fuel violent extremism that can be conducive to terrorism. In a recent study on violent extremism in Africa, it was noted that, while the lack of education and poverty have an influence on radicalization, in the vast majority of cases the final tipping point was an act of State violence and abuse of power, including disregard for international law.[11]

48. Ensuring respect for the law and protecting civilians are also fundamentally important from the perspective of restoring peace and preventing the spread and recurrence of conflict. Significant numbers of civilian casualties, coupled with the devastation of entire cities and towns and the ensuing displacement that we see today, result in a complex myriad of profoundly negative humanitarian, development, social, political and other consequences. These serve only to perpetuate conflict and, in so doing, undermine the prospects for future peace and stability in the countries, and potentially the regions, concerned.

C. Developing good policy and practice at the national and regional levels

49. I am encouraged by the efforts of a range of actors at the national and regional levels to engage and support Member States and their military forces, as well as non-State armed groups, in strengthening protection and respect for the law and developing good practices.

50. For example, in October 2017, the Government of Afghanistan adopted a national policy on the prevention and mitigation of civilian casualties that had been developed with the support of the United Nations and the Centre for Civilians in Conflict. The Government's commitment to the mitigation of civilian harm is reported to have led to fewer civilian deaths and injuries from national military and police operations in 2017.

51. Similar engagement by the Centre for Civilians in Conflict and other organizations has taken place with regard to the development by the Government of Nigeria of a national policy on civilian harm mitigation and the establishment of a civilian casualty mitigation team by Civil-Military Cooperation of the Armed Forces of Ukraine. Reference should also be made to the established practice of engaging parties to conflict that are listed in my reports on children and armed conflict to develop and implement action plans aimed at ending the recruitment and use of children by armed groups. To date, 28 listed parties have signed 29 action plans pertaining to the prevention of the six violations against children, namely, killing and maiming of children, recruitment and use of children as soldiers, sexual violence against children, abduction of children, attacks against schools and hospitals, and denial of access.

52. Demonstrating the important role of national lawmakers and policymakers in strengthening the protection of civilians, the Congress of the United States of America established important protection-related requirements in the National Defense

[11] See United Nations Development Programme, *Journey to Extremism in Africa* (2017), p. 73.

Authorization Act for Fiscal Year 2017, responding in part to recommendations from InterAction and other United States-based non-governmental organizations (NGOs). Those requirements included a report detailing the plans of the Department of Defense to enhance security assistance programmes with measures to prevent and mitigate harm to civilians, and a requirement for an annual Department of Defense report on civilian casualties resulting from United States military operations, including the date, location and type of the operation in which they were harmed. The Department must also describe its process for investigating civilian deaths and the steps it has taken to mitigate civilian harm, and must take into account credible reports of civilian casualties from NGOs and other public sources when preparing the report. This is one example of a practical step towards greater transparency and enhancing the protection of civilians.

53. At the regional level, the United Nations is supporting the development of a compliance framework to prevent and address possible violations of international law by the Joint Force of the Group of Five for the Sahel. It includes measures relating to the selection and screening of units and personnel; a United Nations-Joint Force planning cell to support the planning and conduct of operations and the inclusion of precautionary measures to prevent civilian harm; the implementation of after-action reviews of incidents involving civilian casualties; and the establishment of monitoring, reporting and accountability mechanisms.

54. As regards non-State armed groups, to date 17 such groups have signed action plans with the United Nations to end the recruitment and use of child soldiers. In addition, Geneva Call's "deeds of commitment", through which such groups pledge to respect and be held publicly accountable for the implementation of specific humanitarian norms relating, for example, to the prohibition of the use of anti-personnel mines and of sexual violence, have yielded concrete results. These include the destruction of large stockpiles of anti-personnel mines and the release of child soldiers. In 2017, Geneva Call trained 1,300 members of 29 armed groups on international humanitarian law. Later in 2018, the Office for the Coordination of Humanitarian Affairs and Geneva Call will convene an expert meeting on the use by non-State actors of explosive weapons in populated areas as part of ongoing efforts to encourage such groups to avoid causing harm to civilians.

IV. Advancing protection priority I — recommended actions

55. My previous report contained several recommendations for enhancing respect for international law and promoting good practices by parties to conflict. Building on those, I would recommend to Member States the additional, concrete actions set out below to further advance protection priority I.

Action 1: Develop national policy frameworks on the protection of civilians

56. To ensure the effective implementation of international humanitarian and human rights law, Member States should develop a national policy framework that builds upon good practice and establishes clear institutional authorities and responsibilities for the protection of civilians and civilian objects in the conduct of hostilities. This is particularly urgent, not least because of the increasing incidence of urban conflict and the propensity of some military forces conducting urban operations to rely on aerial assets and partner forces while limiting the deployment of ground forces. That can limit access to reliable intelligence, the accuracy of target selection, the estimation of collateral damage and the implementation of post-attack responses to civilian harm. Such circumstances demand that the parties concerned take additional steps to spare civilians and civilian objects from the effects of hostilities. With that in mind, and as

detailed in the annex, a national protection policy framework should include the minimum elements described below.

57. First, a proactive approach to civilian harm mitigation and response should be included. This would emphasize accountable leadership for protecting civilians and the creation and maintenance of an organizational culture that prioritizes civilian harm mitigation. It would also provide for the establishment of specific capabilities to track, analyse, respond to and learn from allegations of civilian harm, as well as joint civilian and military planning for the protection of civilians, including in the context of coalition operations.

58. Given the high degree of civilian harm and other, broader negative consequences of the use of explosive weapons with wide-area effects in towns, cities and other populated areas, as well as the potential for such use to violate the prohibition of indiscriminate and disproportionate attacks, the policy framework should also include a clear presumption against such use. This approach should be further developed in a specific operational policy that would include tactical alternatives to such use, and specific steps to be taken to avoid civilian harm in circumstances where such use might be unavoidable.

59. Second, the policy framework should seek to strengthen the protection of civilians by partner forces. Security assistance to partner forces whose actions violate international humanitarian law can give rise to potential legal and reputational risks for the State providing such assistance. Such actions also risk entrenching existing political and other grievances that may lie at the root of the conflict and undermine efforts to broker sustained peace. Preventing such risks means promoting the protection of civilians with partner forces and ensuring their compliance with the law. To that end, the policy framework should define the scope and means of engagement with partners, establish clear lines of communication, ensure regular dialogue between parties on all matters of humanitarian concern and establish the conditions under which assistance would be withheld.

60. Third, the policy framework should provide the basis for the development and adoption of legislation that conditions the export of arms on respect for international humanitarian and human rights law and requires pre-export assessments of the risk of unlawful use and end-use monitoring. Several Member States have already adopted strong controls with respect to their arms exports. At the end of 2017, 92 Member States had become parties to the Arms Trade Treaty. I would urge other States to follow suit.

61. Fourth, given the increasing incidence of urban conflict, the policy framework should provide the basis for the establishment of specific urban warfare training schools and greater resort to scenario-based training. This would allow military forces to be better prepared to protect civilians in urban settings, by facilitating greater reflection on the specificities and vulnerabilities of the urban environment and ways and means of protecting civilians in such situations.

Action 2: Enhance compliance by non-State armed groups

62. Enhancing respect for the law also requires changing the behaviour and improving the practices of non-State armed groups. Training and the development of codes of conduct, unilateral declarations and special agreements, as envisaged under international humanitarian law, through which groups expressly commit to comply with their obligations or undertake commitments that may go beyond what are required by the law, can play a key role and should be encouraged. These could usefully include specific civilian harm mitigation measures as outlined above.

63. Such tools send a clear signal to the groups' members, can lead to the establishment of appropriate internal disciplinary measures and also provide an important basis for follow-up interventions. However, it is critically important that such tools and the commitments and principles therein be incorporated into instructions and communicated to the groups' members. Enhancing respect for the law on the part of non-State armed groups through dialogue and the development of such tools necessarily requires sustained engagement by humanitarian and other relevant actors.

64. It is recommended that actions 1 and 2 be part of a broad and coordinated effort to engage and support Member States and their military forces, as well as non-State armed groups, at the national and regional levels in developing the necessary policy and other tools.

Action 3: Promote compliance through advocacy and accountability

65. The development of policy frameworks and other measures to implement and ensure respect for international law would constitute an important advance towards more effective protection of civilians. At the same time, the need for global-level advocacy remains essential for further strengthening of the protection of civilians.

66. Central to such advocacy is the need for a concerted effort to overcome a perceived lack of empathy and outrage among the public at large concerning the plight of civilians affected by conflict in other countries. In 2017, building on the original "Not a Target" campaign of Médecins sans frontières, World Humanitarian Day marked the start of a global effort to raise awareness of the human cost of armed conflict and demand that world leaders act, including by ensuring greater respect for international humanitarian and human rights law. Further steps include improving our data collection, and its disaggregation by sex and age, to facilitate evidence-based analysis of trends in civilian harm and improved public reporting.

67. More attention is also urgently required with respect to ensuring accountability for serious violations of international humanitarian and human rights law, not least because the vast number of allegations of such violations continue to massively outweigh their actual investigation and prosecution. In line with their international obligations, I reiterate my call upon Member States to undertake credible and effective investigations into allegations of serious violations and hold perpetrators to account, with the support of the United Nations, as necessary. In the absence of either the willingness or the ability to do so, a number of Member States have resorted to universal jurisdiction to prosecute international crimes. Other Member States may wish to consider this possibility to contribute to the fight against impunity.

68. To help overcome problems relating to national capacity and resources, I would also urge greater consideration of the use of hybrid courts and the provision of international assistance to national courts. In this regard, I would echo the call from the Peace and Security Council of the African Union and from the Security Council urging the African Union Commission and the Transitional Government of National Unity of South Sudan to take the steps necessary to establish the Hybrid Court for South Sudan.

69. Where national action is lacking, greater recourse should be made to international mechanisms. In this regard, I would urge States that have not yet done so to become parties to the Rome Statute of the International Criminal Court, and all Member States to cooperate fully with the Court.

70. I would also urge greater willingness on the part of Member States in the Security Council, the General Assembly and the Human Rights Council to set aside political differences and take concerted action to ensure accountability for

international crimes. This includes establishing and supporting commissions of inquiry and other such mechanisms or, in the case of the Security Council, the referral of situations to the International Criminal Court where national authorities fail to act. I note that several Member States, including some permanent members of the Security Council, have called for an end to the use of the veto in situations involving the perpetration of war crimes, crimes against humanity or genocide.

71. Greater consideration could also be given to the utility of targeted sanctions imposed by the Security Council as a response to violations, and how such sanctions might be strengthened.

V. Conclusion

72. The present report paints a very bleak picture of the current state of the protection of civilians in armed conflict. It is a picture of immeasurable human and societal decimation — an inevitable consequence of the resort to arms without sufficient willingness on the part of all concerned to fully respect and ensure respect for the rules of international humanitarian and human rights law. The report also offers some hope. In particular, the development of national policy frameworks that establish clear institutional authorities and responsibilities for the protection of civilians would significantly strengthen respect for the law, including by partner forces. The same can be said for the promotion of and support for similar initiatives with non-State armed groups. But these alone will not be sufficient.

73. The year 2019 will mark 20 years since the protection of civilians was placed on the agenda of the Security Council during a Canadian presidency. In 1999, it was the brutality in Sierra Leone, the ethnic cleansing in the Balkans and the genocide and displacement in the Great Lakes region that drove Canada to bring the issue of the protection of civilians before the Council. As the then-Minister for Foreign Affairs of Canada, Lloyd Axworthy, said at the time: "Promoting the protection of civilians in armed conflict is no sideshow to the Council's mandate for ensuring international peace and security; it is central to it. The ultimate aim of the Council's work is to safeguard the security of the world's people, not just the States in which they live."

74. Today, while some of the contexts and parties have changed, as shown clearly in the present report, the suffering of civilians and the need for respect for the law remain constant. So too does the centrality of protection to the Security Council's mandate for ensuring international peace and security. The twentieth anniversary of the protection-of-civilians agenda, therefore, provides an opportune moment to take stock: to review the gains of the past 20 years; to identify areas that require further attention and progress, now and in the years ahead; and to chart a future course of action by the Security Council, Member States and other actors to further strengthen the protection of civilians in armed conflict. That includes greater consideration of the role of the protection of civilians in the broader context of crisis prevention, which, for the sake of the millions currently exposed to, and at risk of, violence and displacement around the world, remains an overarching priority.

Annex

Action 1: Develop national policy frameworks on the protection of civilians

Drawing on existing good practice and policy, a national protection policy framework should include the minimum elements described below.

1. **A proactive approach to civilian harm mitigation and response**

Leadership, culture and training

The policy framework should emphasize the critical importance of leadership for protecting civilians from harm. This includes the need for leaders (both civilian and military) at all levels to understand and communicate to their subordinates their legal obligation to protect civilians and civilian objects and its importance to mission effectiveness; and to ensure the existence within their organizations of a culture that prioritizes civilian harm mitigation. It also includes ensuring leader accountability for fulfilling these responsibilities. To support the existence of such a climate, the framework should establish focused, iterative and graduated training modules on the protection of civilians and civilian harm mitigation throughout the professional military education system, as well as unit-specific training at the operational level.

Civilian casualty tracking, reporting and response

The policy framework should also establish specific capabilities, standards and methodology to track, analyse and respond to allegations of civilian harm, such as along the lines of the Civilian Casualty Tracking Cell of the International Security Assistance Force. Such capabilities should be used to enable assessments that identify the causal factors that contribute to civilian casualties and inform the necessary adjustments to ongoing and future operations. Provision should be made for the use of reliable data from third parties (such as local and national officials, United Nations actors and civil society) and for regular, public reporting on the number of allegations, response actions and their outcomes, including in the context of coalition operations.

The policy framework should also outline the process for post-incident response, including the investigation and prosecution of serious violations, the transparent communication of findings and the provision of post-harm assistance to victims and their families.

Joint planning and engagement with partners

The policy framework should strengthen joint civilian and military planning for the protection of civilians in specific operations and ensure regular dialogue with humanitarian actors on protection concerns. Guidance should also be provided on how to safely and responsibly engage with local communities and civil society on protection concerns. In addition, the framework should provide for engaging other Member States, as well as regional or international partners, to share good practices, including in relation to tactics, techniques and procedures, training and the provision of security assistance.

A presumption against the use of explosive weapons in populated areas

The policy framework should include a clear presumption against the use of explosive weapons with wide-area effects in populated areas, which should be based on a clear understanding of the area effects of various types of explosive weapons and the resultant risk posed to civilians in the short and long terms. Such an understanding should take into account technical data relating to the expected performance of the

weapons in a conflict setting; an analysis of the practical procedures through which the weapons are applied to targets in operational use (such as the practices of "registration of fires" and "bracketing"); and an understanding that urban terrain and infrastructure have an impact on the employment and effectiveness of weapons.

This presumption should be further developed in a specific operational policy that provides for tactical alternatives to the use of explosive weapons with wide-area effects in populated areas, and for specific steps to be taken to mitigate civilian harm in circumstances in which such use is unavoidable. These should draw on existing operational policies and practices, including the need for higher command authority for such use to reflect the increased risk to the civilian population and enable access to additional intelligence, surveillance and reconnaissance resources; and the implementation of collateral damage estimation and battle damage assessments. Existing weaknesses, such as in collateral damage estimation, would also need to be addressed.[1]

2. A commitment to strengthen the protection of civilians by partner forces

The policy framework should include a commitment to strengthen the protection of civilians by partner forces. Such a commitment would clearly define the scope and means of engagement with partners, establish clear lines of communication and ensure that there is regular dialogue between parties on all matters of humanitarian concern. There should be continuous assessment of partner conduct through the prism of international humanitarian and human rights law as appropriate, and the implementation of measures that help to better protect civilians, as well as training and instruction on the application of the law and good practices for civilian harm mitigation. The provision of other forms of military training, as well as funding, the transfer of arms and other military support, should be contingent upon partner forces' commitment and performance in protecting civilians and ensuring respect for international law.

3. Conditioning arms exports on respect for international law

Whether in the context of security assistance or the export of arms in general, the policy framework should provide the basis for the adoption of legislation that requires pre-export assessments of the risk of unlawful use. Such assessments should be based on the aggregated risk of unlawful use given prior conduct as well as capacity and competence. This requires access to the information necessary to evaluate whether there is such a risk. Should an assessment reveal a substantial risk that the weapons being exported could be used to commit or facilitate a serious violation of international humanitarian or human rights law, then the export should not be authorized. Furthermore, provision should be made for arms exports to be accompanied by customized technical assistance focused on appropriate lawful use and management of the specific items.

In the event of allegations of serious violations, tripwires should be established for the reassessment of certain arms export authorizations and the identification of options for preventing the use of certain weapons systems. This can also include remedial training to address concerns and restore assistance.

[1] L. Lewis and R. Goodman, "Civilian casualties: we need better estimates — not just better numbers", *Just Security* (22 March 2018), available from https://www.justsecurity.org/54181/civilian-casualties-estimates-not-numbers/.

4. Developing military competence in protecting civilians during urban warfare

Given the increasing incidence of urban conflict, the policy framework should provide the basis for the development of military competence in protecting civilians during urban combat. This should include the establishment of specific urban warfare training schools and greater resort to scenario-based training. That would allow military forces to be better prepared to protect civilians in urban settings by facilitating greater reflection on the specificities and vulnerabilities of the urban environment and ways and means for protecting civilians in such situations, such as tactical alternatives to the use of explosive weapons, the anticipation of and response to population displacement, and the provision of front-line trauma care for sick and wounded civilians as well as combatants. That in turn would usefully inform future operations, training, doctrine and further policy development. Access to such resources should be available to other military forces.